9.

FEB 3 1919
JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

R. A. FLANDERS as Trustee in Bankruptcy of M. A. Coleman, Bankrupt,
Appellant,

vs.

ELISHA JORDAN COLEMAN,
Appellee.

No. [redacted]419

APPEAL FROM THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF GEORGIA.

BRIEF OF THE APPELLANT.

FREDERICK T. SAUSSY,
A. S. BRADLEY,
Counsel for R. A. Flanders, Trustee of M. C. Coleman, Appellant.

BRAID & HUTTON, INC., PRINTERS, STATIONERS, LITHOGRAPHERS, SAVANNAH, GA.

INDEX

	Page
Syllabus	1
Statement of the case	2-8
Specification of error	8, 9
Arguments and authorities cited	9, 12
(1) Gifts of real estate in Georgia presumed on what showing	9-12
(2) Statute 13th Eliz. and Bankruptcy act Sec. 1 sub Sec. 25, Sec. 67 e, and 70 e	13-18
(3) Fraudulent transfers may be in parol in relation to realty	14
(4) The amendments of 1903 and 1910 conferring jurisdiction, under Sec. 67 e, 70 e	18
(5) The transaction of 1915, dissected, to show a transfer was made	20
(6) Possession by bankrupt at time of filing petition gives jurisdiction to determine rights in land	20
(7) The status of the locus, before and after 1915, compared	21, 25
(8) Explanation of the 50-acre tract, which was included in the rent notes	23
(9) Equity has jurisdiction to give remedy to trustee	30-33
The importance of the question, generally	33, 40
Georgia Appellate Courts bound by issue found by jury supported by any evidence	37
Summary and Conclusion	40, 41

CASES CITED.

	Page
Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 301	18
Altgelt v. Escalero, 110 S. W. R. 989	6
Bardes v. Bank of Hawarden, 178 U. S. 150	17
Bell v. Stewart, 98 Ga. 669	35
Blackmon v. Burt, 99 Ga. 118	26
Bolt v. Rogers, 3 Paige 154, 157	30
Brooks v. Fowler, 82 Ga. 329	35
Burt v. Kuhnen, 113 Ga. 1143	35
Carson, Pirie et al. v. Chicago etc. Co., 182 U. S. 438	16
Causey v. Causey, 106 Ga. 193, 194	12
Chandler v. Von Roeder, 24 How. 224	15
Clay v. Waters, 178 Fed. 393	18
Coder v. Arts, 213 U. S. 223	18
Collins v. Bradley, 227 Fed. 199	31
Cook v. Long, 27 Ga. 280	10
Cumming v. Butler, 6 Ga. 88	26
Daniel v. Frost, 62 Ga. 703	9, 11
Davis v. Kirkland, 1 Ga. Appls. 19	37
Dayton v. Stanard, 241 U. S. 588	18
Dent v. Ferguson, 132 U. S. 66	30
Dunn v. Bray, 88 S. E. (Ga.) 931	12
First Natl. Bank v. Bayless, 96 Ga. 685	6
Fletcher v. Fuller, 120 U. S. 534	27
Friederichsen v. Renard, decided Mch. 20-18 by this Court	31
Gill v. Strozier, 32 Ga. 324	11
Harris v. First National Bank, 216 U. S. 382	17
Harvey v. West, 87 Ga. 557	2
Hendricks v. Daniel, 119 Ga. 361	26
Hicks v. Sharp, 89 Ga. 311	6
Inhabitants of School Dist. v. Benson, 31 Me. 391	30
Innerarity v. Mims, 1 Ala. 669	26
Jackson v. Rogers, 1 John. Cas. 33	30
Johnson v. Griffin, 80 Ga. 551	12
Jordan v. Faircloth, 27 Ga. 372	32

10

FILED
APR 7 1919
JAMES D. MAHER,
CLERK.

FLANDERS, Trustee,
vs.
COLEMAN.

No. 984. 419

REPLY OF COUNSEL FOR APPELLANT.

The merits of the question whether M. C. Coleman was owner of the land and rent notes at the time he transferred the latter and disclaimed orally the former to E. J. Coleman, ~~is~~ are not before this Court.

Conceding that M. C. Coleman had title to the land and the notes, because of the Georgia statute under the circumstances contended conveyed title to him, the question resolves itself into whether the lower court has jurisdiction to grant relief to the trustee in bankruptcy.

We insist, that thus analyzed, the court below did have jurisdiction, for if it did not have jurisdiction, then any transfer of rents, and possession and the oral disclaimer of ownership of real estate, made just prior to bankruptcy by the owner to a third person, with intent to delay and defraud creditors, would remit the trustee to sue in the State Court, in spite of Sec. 67e of the bankruptcy act, giving jurisdiction to the Federal Court.

In other words, it can not be the law that the mere setting up of an independent title by the transferee of the notes and holder of the possession, could affect the question of jurisdiction of the Federal Court; as then the question of

jurisdiction would depend entirely upon the defense of the respondent on the merits, and not upon the allegations and proof of the complainant.

Possession of land, is itself a thing of value, that may be traded. It may be sold, it may pass by delivery, and is by far one of the greatest incidents of ownership.

Howard vs. Easton, 7 Johns, 203.

And when it must be conceded for the sake of the argument of jurisdiction that this land is vested in the bankrupt, and he owned the rent notes, we can not escape the proposition that the bankrupt just prior to bankruptcy did transfer his property with intent to hinder, delay and defraud his creditors. The Judge of the lower court concedes this in his certificate of jurisdiction. (Record, page 62.)

In Harvey vs. West, 87 Ga., page 557, cited by opposing counsel, the seven years had not elapsed, and the son had no statutory title by virtue of that fact.

The Court will notice that appellee's counsel does not undertake to explain the definition of the word "transfer," in Sec. 1, Sub. Sec. 25 of the bankruptcy act.

The case of Harris vs. Bank, 216 U. S. 383, in no wise conflicts with the contention we make. In that case nothing was transferred by the bankrupt. Here, the possession of the land and $4,000.00 of rent notes were transferred by the bankrupt ONE MONTH PRIOR to bankruptcy. A transfer of possession, a transfer of notes, constitute transfers within the act. The question whether they were the **property of the bankrupt,** is not one of jurisdiction, but one going to the merits of the case. To reduce the proposition to its absurdity, if a lessor who is owner of land, transfers fraudulently

within four months of his bankruptcy, the lease, all that the transferee need do would be to claim that he deraigned title to the land from another source, and defeat the jurisdiction of the Federal Court to try the issue. Courts of Equity will never define what is and what is not fraud, for if they did, then the perpetrators of a fraud would be careful to see that their acts came without the definition. The law of jurisdiction, cannot depend on the devices resorted to to escape the trial of that issue in the Federal Court.

The learned counsel for the appellee on page 19 of his brief, comes near the question involved but just misses it. He supposes that the land in dispute was owned by E. J. Coleman, and hence with that supposition traces title to the rent notes and the possession in E. J. Coleman from one whom he claims was not an owner, namely the bankrupt.

But, if he had supposed, as the bill and proof shows, that M. C. Coleman was the owner of the land and of the notes, when he transferred them to E. J. Coleman, he would have to admit that E. J. Coleman did derive something of the bankrupts by virtue of the unlawful transfer, for he got possession and $4,000.00 of notes which he has collected. His argument in the language of the logicians, "begs the entire question" before this court.

Respectfully submitted,

FREDERICK T. SAUSSY,
A. S. BRADLEY,
Counsel for Appellant.